EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE LIAISON
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May 4, 1984

LEGISLATIVE REFERRAL MEMORANDUM

Chrono

TO: Legislative Liaison Officer

Department of Defense
Central Intelligence Agency
Office of Personnel Management
Merit Systems Protection Board

SUBJECT: State Department report on H.R. 5197,a bill affecting certain allowances and benefits of Foreign Service and other personnel who serve abroad.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Friday, June 1, 1984.

Questions should be referred to James Barie (395-4580) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

Jeffrey Weinberg for
Assistant Director for
Legislative Reference

Enclosures

United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

In response to your request of April 23, we are pleased to submit the following report on H.R. 5197, a bill affecting certain allowances and benefits of Foreign Service and other personnel who serve abroad.

H.R. 5197 consists of four Titles. A number of amendments included are identical or derived from proposed legislation submitted to the Congress by the Executive Branch in 1983 and introduced in the Senate as S. 1136. Where appropriate, the following summary compares provisions of H.R. 5197 with those in S. 1136. An analysis of S. 1136 is enclosed for your convenience.

TITLE I. AMENDMENTS TO THE FOREIGN SERVICE ACT OF 1980.

SEC. 101. Inspector General of the Department of State. Same as Section 2 of S. 1136.

SEC. 102. Reports on Competence of Nominees for Chief of Mission. Under this provision, the reports currently made by the Secretary of State to the Senate regarding the competence of candidates for Chief of Mission positions would be required to be made public as soon as provided to the Senate Foreign Relations Committee. It seems likely that requiring these reports to be made public would create an incentive for blandness on the part of the drafters. The reports are available under the Freedom of Information Act.

SEC. 103. Limited Appointments. This provision is a variation on Section 3(2) of S. 1136, which was intended to correct certain problems arising from the use of limited appointments. However, Section 103 is less desirable than Section 3(2) of S. 1136 because it contains unnecessary limits on the number of individuals who can serve on limited appointments, and would severely handicap management's ability to employ non-career and confidential employees overseas. It also omits one important exception to the normal five-year limitation--allowing an

The Honorable
William D. Ford, Chairman,
Committee on Post Office
and Civil Service,
House of Representatives.

extension in order to complete an assignment in extraordinary circumstances. Section 103 also limits the flexibility of agencies to use limited appointments by requiring reports to the Congress before such appointments can be made and by requiring a certification which may be difficult to make.

The grievance language basically codifies what the Secretary now does vis-a-vis career candidate grievants whose claims are meritorious. We do not know what is contemplated by the addition of the phrase "in special circumstances set forth by regulation".

SEC. 104. Employment of Family Members. Section 311(a) of the Foreign Service Act currently requires that family members of members of the Foreign Service be given "equal consideration" for employment at posts abroad. This amendment would require preferential consideration. This type of preference has been successfully opposed when it was proposed in the past for overseas Defense installations. On balance, we believe "equal consideration" provides the most equitable consideration for all USG dependents abroad. Preferences would be opposed by local nationals and by other U.S. citizens residing abroad.

SEC. 105. Salaries of Chiefs of Mission. This provision is identical to Section 4(1) of S. 1136.

SEC. 106. Salaries of the Senior Foreign Service. This provision requires adjustments of pay levels for members of the Senior Foreign Service to be made in accordance with selection board rankings. While the philosophy behind this amendment is consistent with other performance-based personnel functions in the Foreign Service system, in this particular instance it deprives management of the flexibility to make such adjustments administratively, or based on criteria negotiated with employee representative organizations. For example, State's regulations currently under negotiation would permit such adjustments to be made automatically every second year as long as the member of the Senior Foreign Service has been rated "excellent" or "outstanding" during the intervening period. For agencies with large numbers of Senior Foreign Service members, a flexible administrative approach is highly desirable because the Senior Selection Boards are already over-burdened with their promotion ranking responsibilities without being required to do a ranking of the entire class for salary adjustment purposes.

SEC. 107. Performance Pay. This amendment places performance pay on the same basis as promotions and limited career extension, permitting no deviation from selection board

rankings in making performance pay awards. While the principle is generally a sound one, management firmly believes it should have some latitude to award performance pay in circumstances where the full contributions of the individual to the agency and the Government is not possible to be made known to selection boards.

SEC. 108. On-Call Pay. This amendment, which would establish a revised on-call system comparable to that used for Veterans Administration nurses and replace existing on-call and standby pay legislation, is an interesting approach to an existing problem. However, this change would set Government-wide precedents and substantial costs would be involved.

SEC. 109. Assignments to Foreign Service Positions. This section would place major limitations on the ability of agency heads to determine when an agency mission would be best served by assigning a member of the Civil Service to a Foreign Service position. Currently, the statute states that members of the Foreign Service should normally be assigned to Foreign Service positions but provides latitude to do otherwise. It is very difficult to put senior management in the position that it must certify that there is no one in the Service qualified to fill a position before an outside member can be assigned. Some latitude for relative performance should be given. There is also the possibility, if this section were enacted, that the pressure would increase to use limited Foreign Service appointments for domestic positions even if Congressional intent is that the section be used for overseas assignments only.

SEC. 110. Eligibility for Promotions. This section is substantially identical to Section 5(1) of S. 1136.

SEC. 111. Retirement for Expiration of Time-in-Class.

This section is similar to Section 5(2) of S. 1136 in authorizing LCEs for those in a class "from which no effective promotional opportunities exist." However, instead of authorizing temporary extensions in excess of one year when necessary to permit a member to attain eligibility for an immediate annuity (50/20), section 111 would mandate extensions for up to one year when necessary for that purpose.

SEC. 112. Retirement Benefits. Identical to Section 5(3) of S. 1136.

SEC. 113. Separation for Cause. Nearly identical to Section 5(4) of S. 1136, but must be seen in conjunction with Section 122 below's modification of Section 1110 of the Foreign Service

Act, which could give it a different meaning.

SEC. 114. Special Contributions to the Foreign Service Retirement and Disability Fund. This section is nearly identical to Section 6(a)(2) of S. 1136.

SEC. 115. Election Concerning Survivor's Annuities for Former Spouses. This section is identical to Section 6(a)(3)(A) of S. 1136.

SEC. 116. Retirement for Disability or Incapacity. This section is identical to Sections 6(a)(4)(A) and (B) of S. 1136.

SEC. 117. Death in Service. This section is identical to Sections 6(a)(4)(C) and (D) except that H.R. 5197 correctly identifies the amendments as being to section 809 rather than to section 808 of the Foreign Service Act.

SEC. 118. Lump-Sum Payments. This section is similar to Section 6(a)(7) of S. 1136 in --

(1) requiring that members be separated for 31 days to be eligible for a refund of their retirement contributions; (This conforms to a recent Civil Service retirement change.) and

(2) denying any share of a refund payment to a former spouse who has remarried prior to age 60.

Section 118 would not authorize any payment of a share of a refund to a spouse as would Section 6(a)(7)(B) of S. 1136.

SEC. 119. Missing Spouses and Former Spouses. This section is nearly identical to Sections 6(a)(3)(B) and 6(a)(11) of S. 1136.

SEC. 120. Travel and Related Expenses. These provisions would allow (1) an extension of the current 90-day period for storage of household goods under unusual circumstances and would allow (2) travel expenses for children of separated parents from the child's residence to the duty station of the other parent rather than to and from the closest point of entrance.

SEC. 121. Health Care. Subsection (a) would amend Section 904(d) of the Foreign Service Act to require waiver of administrative limitations on medical payments when the medical condition was clearly caused by or materially aggravated by location abroad. Such limitations now may be waived.

The only such limitation relates to the one-year limit on payment of outpatient costs. This is now waived, in the few cases when it now comes into play, based on financial hardship.

Subsection (b) of Section 121 would further amend Section 904 of the Foreign Service Act to authorize continued enrollment of former spouses of members and former members of the Foreign Service in Government health insurance plans in which the former spouses were enrolled on the date of divorce.

Former spouses are not now eligible to continue in a Government health insurance plan. This bill would authorize their participation provided they paid the full cost -- employee plus Government share. Since these contribution rates are set by OPM at a level to cover all costs including administrative expenses, it would appear that there would be little cost to the taxpayer from enactment of this provision. However, enactment probably would increase slightly the overall per enrollee cost of the program because of coverage of this older group. This cost would be shared between currently-enrolled employees and the Government.

A person divorced after enactment would have 31 days to elect to continue coverage. Those divorced anytime in the past would have six months from the date of enactment to elect coverage. The Director, OPM, would be authorized to waive the deadlines "in any case in which the Director determines that the circumstances so warrant."

The Director, OPM, in consultation with the Secretary of State, would be directed to notify all current former spouses of their new rights. We believe this should be the responsibility of the Secretary of State, since the former spouses are beneficiaries of the FSRDS.

If this amendment were to Chapter 89, Title 5, U.S.C. rather than the Foreign Service Act, it would facilitate maintenance of consistency of the program with the Government-wide program in the event of new laws or regulations affecting the latter. Coverage of new spouses or participation in open seasons should be kept consistent.

SEC. 122. Grievances.

The proposed amendments to Section 1101(a) would equate violation of collective bargaining agreements with violations of laws or regulations. With few exceptions, provisions of

collective bargaining agreements eventually are incorporated in regulations. Therefore, for the most part, individual grievants can now grieve alleged violations of collective bargaining agreements. This amendment will create confusion as to what additional rights, if any, are intended, and with regard to the equation of collective bargaining agreements with law.

Section 1101(a)(1)(C) may reflect a concern with MSPB rulings to the effect that the Board will not consider a proposed disciplinary action. However, setting off the grievance process whenever an agency makes a proposal to take disciplinary action (which may be cancelled when the employee responds to charges) seems a disproportionate remedy.

The Section 1101(b)(3) and Section 611 amendments taken together make termination of limited appointments grievable. The agencies feel very strongly that this should not be permitted because they will never be able to terminate limited appointments except after going through the full grievance process. For example, political appointees will be able to grieve and remain on an agency's rolls for months after a change in Administration, or change in job requirements. Career candidates under limited appointments are protected already because they can be provided new limited appointments when agencies determine their claims are meritorious.

Section 1104(b) shortens the period for pre-FSGB processing of a grievance from 90 to 60 days. 90 days is a reasonable time, given the global nature of the Department's operations, the complexity of some grievances and the fact that members have a three-year span to initiate their grievance, and no time limits after the grievance gets to the FSGB level. We would strongly oppose reducing the pre-FSGB processing period to 60 days.

Section 1105(a) would prohibit former members of the Foreign Service or the Department (but not AID or USIA) from serving on the FSGB. Enactment would largely do away with the rationale for a separate FSGB system which is that it is important to have a grievance body with members who have expertise and experience with the Foreign Service. The other language changes is also legally troublesome in that it provides for an administrative body, the FSGB, to choose its own head, taking away this power from the agency.

Section 1105(b) severely skews the selection of FSGB members against the non-union represented agencies (Commerce and Agriculture). Since only 3 agencies have a voice and since

AFSA has two votes, two unions could block any choice. If we change this section, selections proportionately weighted in relation to the number of employers would seem preferable.

The amendment of section 1105(e) would limit the salary of the executive secretary to the rate for GS-15. Executive secretaries of the Board (at least the current one and his predecessor) have been SFS.

Section 1106(9) providing for reconsideration by the FSGB could be considered a procedural improvement, but the time frame for appeal (30 days) is too long. Also, the parties already have broad latitude in presenting evidence, and we need to provide finality to the process.

Section 1107(b)(5) makes award of attorney's fees mandatory; we strongly oppose. There is no reason to so stimulate grievance cases; the Civil Service MPSB rules do not provide for attorney's fees awards.

Section 1107(b)(6) would permit the FSGB to order promotions or assignments. The FSGB can already recommend promotion or assignment. Further expansion of FSGB powers would interfere with the prerogatives of the President in cases of promotion into the SFS, and with the Department in the case of promotions and assignments. It is essential these remain under management control since directed assignments undermine our entire "open assignments" process.

Section 1107(d) would withdraw the authority of the Secretary to turn down the recommendation of the FSGB if it is contrary to law. Taken together with the amendment to section 1110, this would make the FSGB, an administrative body, the final arbiter of questions of law. We are not aware of any other administrative body which has this authority. We would also oppose it on the ground of experience; thus far the FSGB has not been a good judge of what is legal in the areas of termination of limited appointments and tenuring.

Section 1108(b)(2) would give the Board authority to have records made available, the disclosure of which is prohibited by law. "Contrary to law" is a legitimate ground for refusing to disclose records; there are in fact records legitimately made confidential by law (e.g., visa files, patents, commercial information, intelligence sources and methods), and we would be strongly opposed to this provision.

Section 1110 as previously indicated is a very serious diversion of authority to the FSGB; only in national security cases would the agency have an opportunity for judicial review. This is a dangerous limitation on agency remedies--which should include the ability to have a judicial determination of whether or not a FSGB recommendation is contrary to law. As noted above, we also oppose mandatory government payment of apellant's attorney fees (unless the provision was reciprocally obligative in case the appellant loses). Finally, the amendment would limit the remedies which courts may order pending final disposition of a review; this is both unwise and unnecessary.

SEC. 123. Conversion Period. This amendment would extend the existing period for domestic specialists in the United States Information Agency to be converted from the Foreign Service to the Civil Service by one year, to June 30, 1985. The existing period of three years and four months is adequate, in our judgment, and there is no reason to prolong the transition to the new system. The provision of an additional one year to make conversions contained in the State/USIA Authorization Bill for FY '84 and '85 was limited in application to those individuals originally found to be worldwide available but for whom subsequent developments deemed that they should be in the Civil Service. This is not the circumstance prevailing in USIA, since it has been clear from the outset which individuals were in the domestic category.

SEC. 124. Report on the Senior Foreign Service. This extensive new reporting requirement would impose a considerable burden on the management of the Senior Foreign Service and would unduly constrain the flexibility now accorded to agency heads to adjust the size and composition of the Senior Foreign Service to meet new requirements. We plan to continue to report the numbers of members of the Senior Foreign Service and those on limited appointments and subject to the 5% limit on non-career appointments in our annual report under Section 2402 of the Foreign Service Act, as has been done in each of the first three reports. We think this amendment is unnecessary.

SEC. 125. Annuities for Former Spouses. This section would authorize pension and survivor annuities for certain former spouses.

The 1980 Act required that employees divorced after February 15, 1981 share their annuities on an equitable pro rata basis with their former spouses. However, coverage was explicitly made prospective for employees divorced after the

effective date of the legislation, February 15, 1981, with no requirement for the sharing of pensions for employees divorced before this date.

This bill is intended to provide benefits to former spouses not covered by the 1980 Act. The Department is very sympathetic to the plight of these widows and former spouses. Many have very limited resources, some are disabled. Their plight dramatized the need to change the FSRDS to provide more equitable treatment for former spouses, yet they themeselves were not benefited by the 1980 Act because of the difficulty of legislating ex post facto--reallocating benefits already being paid.

Section 125 addresses the problem. However, it would create some new problems with respect to those covered by the 1980 Act. For example, what will be the reaction of current spouse beneficiaries when they learn that the new class of former spouses will automatically receive benefits without the oversight of a divorce court which presently can amend the division of pension benefits under the Act based on individual circumstances? What will be the reaction of current employee annuitants whose pensions are reduced because they are split, while the annuitants divorced prior to 2/15/81 are not required to have their pensions reduced? The big difference under this bill would be that new payments would be financed by special Government contributions to the Fund rather than deducted from payments due to the previous employee.

The wording of the amendment may be deficient in that it appears to cover not only the former spouses denied coverage under the 1980 Act as intended, but all former spouses currently covered by the 1980 Act under the more generous provisions of this amendment.

The Government Actuary estimates, assuming 150 beneficiaries, that the bill would create an unfunded liability in the Fund of nearly $30 million, which includes an allowance for future cost-of-living adjustments. Section 821 of the Foreign Service Act would be applicable and this would require the Department to amortize this unfunded liability over 30 years.

Section 2109 of the 1980 Act would be repealed by the bill. That section authorized members with former spouses on 2/15/81 who were not otherwise covered by the Act to voluntarily provide survivor annuities to such former spouses by accepting lesser survivor annuities for their current spouses. Agreements so far made under Section 2109 would continue to be honored. However, any former spouses benefitting from such an agreement under Section 2109 would not be eligible for any survivor annuities under this bill.

TITLE II. AMENDMENTS TO TITLE 5 OF THE UNITED STATES CODE.

SEC. 201. Relocation Expenses of Employees. This section would permit reimbursement of actual subsistence expenses up to a maximum of $75 per day while a Federal employee occupied temporary quarters in connection with any reassignment to a high rate geographic area in the U.S. The current maximum is $50 per day.

$75 is the statutory maximum stated in 5 U.S.C. 5702(c). It would be preferable to eliminate the $75 figure in this amendment of 5 U.S.C. 5724a(a)(3) and to incorporate it by reference to the former section in case of any subsequent statutory change in the rate.

This amendment would obviously have Government-wide impact.

SEC. 202. Transportation Expense of Employees Assigned to Danger Areas. This section would authorize travel and transportation expenses for family members when a separate maintenance allowance is elected under the expanded authority in section 5924(3).

SEC. 203. Overseas Differentials and Allowances. The purpose of this amendment is to allow advance payment of differentials, as is now the case for allowances. The Administration opposes this amendment because of the extra costs of earlier payment, and because of the administrative problem with refunds in case of assignments cut short. Advance payment of allowances is warranted to reimburse employees for early expenses. A similar justification does not exist for differentials.

SEC. 204. Education Allowances. Identical in substance to Section 11(3) of S. 1136, but we believe the term "handicapped children" may be broader in applicability than "children with a handicapping condition."

SEC. 205. Advances of Pay. This provision would allow members of the Service to receive advances in pay upon assignment of the employee to a post in the United States from a post overseas rather than only on assignment to a post overseas. While it is true that there sometimes are extraordinary expenses associated with any kind of transfer, a question arises as to whether the situation is as difficult upon transfer to the United States.

TITLE III. AMENDMENTS TO THE HOSTAGE RELIEF ACT.

The previous Hostage Relief Act, enacted in 1980, expired at the close of 1982. Title III. of H.R. 5197, in effect, proposes a new Hostage Relief Act based on the prior version, but with certain new provisions in the area of compensation. It is virtually identical to the proposed new Hostage Relief Act submitted by the Administration for congressional consideration in 1983.

TITLE IV. MISCELLANEOUS AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES.

SEC. 401. Use of Government Vehicles and Taxi Cabs. This amendment will delete Section 11 of the State Department Basic Authorities Act of 1956 on grounds that it is redundant. This is an accurate assessment.

SEC. 402. Expenses of Arbitration. Identical in circumstances to Section 10(2) of S. 1136.

SEC. 403. Subsistence Expenses. Identical to Section 10(3) of S. 1136.

SEC. 404. Inspector General of United States Information Agency. This provision would extend the Inspector General Act of 1978 to cover USIA. USIA is in the best position to determine whether this is desirable or not. If it is desirable, the State Department model as well as the domestic Inspector General model should be considered.

SEC. 405. Conforming Amendments Regarding the United States Information Agency. All of these amendments reflect the recent change in the name of USIA from the former title, the International Communications Agency, and they are of a purely technical nature. Section 303 (b) of PL 97-241 already accomplishes the change of title by a general substitution of reference to USIA in all laws referring to USICA.

The Department is advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosure:

Analysis of S. 1136.

Foreign Service Act Amendments of 1983: Sectional Analysis (Revised as of 4/26/84)

Section 2: "HATCHING" THE INSPECTOR GENERAL (F.S. Act Sec. 209(a))

This amendment would make clear that the Inspector General of the Foreign Service and the Department of State is under provisions of the Hatch Act, thus prohibiting participation in certain partisan political activities.

Section 3(c) of the Inspector General Act of 1978 states that no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws. The purpose of this provision is to make clear that the Inspectors General are subject to the limitations of the Hatch Act on participation in political campaigns. There is no comparable provision in the law establishing the Inspector General of the Department of State and the Foreign Service. This amendment would eliminate any question that the holder of that position, who is appointed by the President with the advice and consent of the Senate, is not subject to the Hatch Act. Accordingly, it seems appropriate to emphasize the nonpolitical nature of the incumbents' responsibilities. The enactment of this section is in no way intended to be used as a precedent in determining whether any other officer of the Government is or is not subject to the Hatch Act.

Section 3(l): FIVE PERCENT LIMITATION ON NON-CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE (F.S. Act Sec. 305(b))

Section 305 of the Act now provides that career government employees who are members of the Senior Executive Service are not to be counted against the 5% limit on non-career membership in the Senior Foreign Service. Most senior career government officials appointed to limited appointments in the SFS, with reemployment rights to their career status, will in fact come from the SES. In rare cases, however, it will be desirable to appoint a non-SES career employee to an SFS limited appointment (for example, a scientific supergrade appointed under P.L.-313, or a member of one of the parallel services to the SES. This amendment would exempt career government officials from their other career services from being counted against the non-career ceiling. This is consistent with the original purpose of the 1980 Act.

Section 305 is also being revised to make permanent the temporary provision in section 2403(c) of the 1980 Act that excludes appointments made by the Secretary of Commerce to the Senior Foreign Service from the calculation and application of the limitation of this section on limited appointments. The amendment makes permanent the limit of 10 on the number of members serving in the Senior Foreign Service at any one time under limited appointment by the Secretary of Commerce.

This change is being sought by the Department of Commerce because the October 1, 1985 expiration date in section 2403(c) of the Foreign Service Act of 1980 does not allow for "phased hiring" during the period of transition from State detailees to FCS personnel. Moreover, the Department needs flexibility indefinitely to competitively fill numerous SFS positions with available highly qualified private sector executives.

Typically, the individuals would serve one 3-4 year tour ad apply their expertise to penetrating difficult export markets and building extensive Embassy contacts in host countries and regional markets.

Section 2403(c) of the 1980 Act is being repealed by section 10 of the bill.

Section 305(b) of the 1980 Act is being completely restated for editorial reasons. The only substantive changes are those described above.

Section 3(2): EXCLUSIONS FROM 5 YEAR LIMIT ON LIMITED APPOINTMENTS (F.S. Act Sec. 309)

This amendment would correct inadvertent omissions in the original text of section 309 and would consolidate in a single section all exceptions to the 5 year limitation on the duration of limited appointments. Exceptions are provided in order to avoid interruption of a current assignment, for service as a consular agent, for employment as a family member, and for continued service as a career candidate when a grievance is pending. Consular agents perform consular and related services in locations where there are no Foreign Service posts, and it is highly desirable to retain their services for an indefinite period of time, if their performance is satisfactory. They cannot be career members of the Foreign Service, either because they are foreign nationals, or because they are available for service only in one locality. Career candidates serving on limited appointments sometimes contest decisions not to grant them career status before the expiration of the maximum 5 year

period for such appointments. The amendment would clarify the Department's authority to extend the candidate's appointment in such a case, if ordered by the Foreign Service Grievance Board, or if deemed necessary administratively to provide an equitable chance for career consideration. The exception for family members is already provided by existing law, but is consolidated here with other exceptions for convenient reference. The exception to permit completion of a current assignment is intended to promote greater efficiency in the assignment of individuals serving under limited appointments. It is expected that the need to use this authority will arise rarely.

Section 4(1): SALARIES FOR CHIEFS OF MISSION
(F.S. Act Sec. 401(a))

This amendment would make clear that only those individuals appointed by the President and confirmed by the Senate are to receive the salary of a Chief of Mission. Members of the Service assigned to perform the functions of a Chief of Mission, for example, as the head of a U.S. Interests Section or as a charge d'affaires, would remain eligible for a salary differential under section 411 of the Act, but would not receive the statutory salary of an Ambassador.

Section 4(2): ELIGIBILITY FOR WITHIN GRADE SALARY INCREASES
(F.S. Act Sec. 406(a))

Section 406 presently addresses three points. First, it provides in subsection (a) a schedule for regular within-class salary increases for members of the Service. Second, in the same subsection it provides for withholding such increases on the basis of selection board determination that performance, while satisfactory, is at a level below that of most members of the class. Finally, subsection (b) provides for additional increases for meritorious service. Because of the difference between the Foreign Service performance evaluation cycle and the anniversary dates of promotion into a class, it has been difficult under the present language to reconcile the regularly scheduled increases with meritorious increases, on the one hand, and, on the other, withholding of regular increases on performance grounds. The amendments would make each point the subject of a separate subsection, so that, by regulation, the actions may be keyed to one another or independent as appropriate. Implementing regulations would be consistent with government-wide practice for the Civil Service system. In addition, new subsection (c) would make clear that

either deferral or withholding may be ordered in case of members on leave without pay or in part-time employment and must be ordered in cases where selection boards determine performance is not up to the standard of the class.

Section 4(3): PROVIDENT FUNDS FOR FOREIGN NATIONAL EMPLOYEES (F.S. Act Sec. 408)

This amendment would clarify the Secretary's authority to utilize provident funds in countries where this is in accordance with local practice. A provident fund is used in lieu of a life-certain annuity as a retirement benefit in many countries. Basically, a provident fund is made up of the deposits of a specified percentage of an employee's salary by the employer and the employee. Upon termination of employment for retirement or other reasons, an employee receives the cumulative deposits plus interest as a lump-sum, rather than being paid a periodic annuity for life.

The existing statute clearly gives the Secretary authority to establish provident funds consistent with local pay practices for the benefit of Foreign Service National employees. This amendment is necessary to permit the interest that accumulates in such trust funds to be paid out in subsequent years to the beneficiaries. The amendment restates the third sentence of section 408(e) of the Act. Clause (B) is new material, clause (A) is a restatement of existing language.

Section 5(1): INELIGIBILITY FOR PROMOTION AFTER EXPIRATION OF TIME-IN-CLASS (F.S. Act Sec. 601(b))

In certain cases, members of the Foreign Service are allowed to remain beyond expiration of their time-in-class, normally for humanitarian reasons to allow them to qualify for an immediate annuity. (Individuals at the FS-1 level and higher are eligible for such an annuity at expiration of time-in-class under section 609, but those at FS-2 and lower are not.) This amendment would insure that individuals retained for this purpose are not eligible for promotion. If they were allowed to compete for promotion, then time-in-class rules would become meaningless.

Section 5(2): LIMITED CAREER EXTENSIONS BELOW THE HIGHEST CLASS IN AN OCCUPATION/RETENTION AFTER EXPIRATION OF TIC TO GAIN ELIGIBILITY FOR AN IMMEDIATE ANNUITY (F.S. Act Sec. 607(b)(1) and 607(d)(2))

The current law permits Limited Career Extensions (LCEs) when individuals have attained the highest salary class for their occupation categories except in the Senior Foreign Service, in which case LCEs are available at each class level. It is now clear that such a restriction below the SFS level could lead to undesirable separations through expiration of time-in-class in categories where there are a very few positions at the highest possible class, so that most individuals could never expect to be promoted. This amendment would permit the Secretary to determine when this circumstance exists, and to authorize by regulation use of LCEs in classes below the most senior. The second part of the amendment would provide new authority to the Secretary to retain individuals below the FS-1 level for more than one year after their TIC has expired, in order to allow them to qualify for an immediate annuity.

Section 5(3) (A) and (B): RETIREMENT BENEFITS/SEVERANCE PAY FOR INDIVIDUALS SEPARATED FROM THE SERVICE AFTER EXPIRATION OF TIC OR FAILURE TO HAVE A LIMITED CAREER EXTENSION RENEWED (F.S. Act Sec. 609(a) and (b))

These amendments modify the existing language of section 609 to avoid an anomaly which would otherwise be created by the adoption of Section 5(2) above. Without these amendments, an individual leaving the service from class FS-2 or below for expiration of time-in-class would receive severance pay, while one at the same levels leaving for expiration of a limited career extension without renewal would be entitled to an immediate annuity. The two situations should be treated the same. The amendments would conform the two cases, and follow the existing practice, first legislated in 1946, that those separated involuntarily from class FS-1 or higher receive an immediate annuity, while those separated involuntarily from classes FS-2 and lower receive severance pay.

Section 5(4): JUDICIAL REVIEW IN SEPARATION FOR CAUSE CASES (F.S. Act Sec. 610(a)(2))

Section 1110 of the Act authorizes an aggrieved party in a grievance case to obtain judicial review of a final action of the Secretary or the Board. Section 610, which provides for separation for cause, specifically applies only the hearing procedures of section 1106 to separation cases before the

Board. Other provisions of Chapter 11 applicable to grievances may in general be applied to the extent appropriate to separations by rule of the Board itself, but it takes a provision of law to have judicial review. This amendment would apply the judicial review provision, now applicable to grievances, to separation for cause cases as well.

Section 6(a)(1): DEFINITION OF FORMER SPOUSE
(F.S. Act Sec. 804(6))

The Act now requires only 10 years of marriage during any period of Federal Government service. Thus an employee who has a former spouse at time of transfer from Civil Service to Foreign Service could be affected, even where the 10 years of marriage do not include any period of time while the participant was in the Foreign Service. This amendment would require that there be at least five years of marriage while one of the partners was a participant in the Foreign Service retirement system in order to qualify for benefits as a former spouse under that System.

When a family separation occurs and a divorce is initiated while an employee is under the Civil Service and the divorce is finalized months or years later after the employee has transferred to the Foreign Service, there is no reason the former spouse should benefit by the special Foreign Service provisions.

The special provisions in the Foreign Service retirement system for spouses and former spouses are in recognition of difficulty spouses of Foreign Service employees have in building an independent economic base caused by frequent moves and the prohibitions on spousal employment abroad. The proposed requirement that at least 5 years of the 10-year marriage requirement must have occurred while the employee was in the Foreign Service is a minimum requirement. This change is consistent with the proposed change of section 811 of the Act to add to the requirements that a member must meet to apply for voluntary retirement, a requirement that the member have completed at least 5 years in the Foreign Service.

Section 6(a)(2): REPAYMENT OF REFUNDS
(F.S. Act Sec. 805(d)(1))

This amendment simplifies the calculation of the amount owing by a member for a previous refund of contributions from the Foreign Service Retirement and Disability System (FSRDS) or from any other retirement system for Government employees.

Such refunds must be repaid by a member in order to obtain any credit for the prior service. At present, amounts owing for such refunds are determined by taking into account the differing contribution rates previously in effect under the FSRDS during the period covered by the refund. This rate at different times has been both higher and lower than the corresponding rate in the Civil Service Retirement and Disability System (CSRDS). The proposed change would adopt the current CSRDS formula expressed in 5 U.S.C. 8334(d) under which the amount owing is simply the amount of the previous refund plus interest.

Section 6(a)(3)(A): ELECTION OF SURVIVOR ANNUITY (F.S. Act Sec. 806(b)(1)(C))

This change would permit a member and former spouse to elect by spousal agreement a reduced survivor annuity. At present they must elect either the maximum survivor annuity or none. This change would also permit such an agreement to be entered into within 12 months after a divorce in the event a divorce occurs after the member's retirement. At present, such elections cannot be made after retirement despite the changed circumstances and desires of the parties.

Section 6(a)(3)(B): MISSING PERSONS (F.S. Act Sec. 806(b)(1)(D))

This amendment deletes section 806(b)(1)(D) of the Act because it is encompassed by the broader treatment of the subject of missing spouses and former spouses in new section 828 of the Act that would be added by section 6(a)(11).

Sections 6(a)(4)(A) and (6)(a)(4)(C): AGE REQUIREMENT FOR MINIMUM ANNUITY AND DISABILITY EXAMINATION (F.S. Act Secs. 808(a) and (b), 809(e))

Sections 808(a) and 809(e) of the Act fix the minimum disability and survivor annuity, respectively, for members who become disabled or who die in service. The minimums are currently based on assumed service to 65, or to a total of 20 years whichever is less.

These amendments would change the specified age to 60 instead of 65 to conform with 5 U.S.C. 8339(g) and 8341(d).

Section 808(b) of the Act requires a disability annuitant whose disability has not been declared permanent by the Office of

Medical Services to undergo an annual physical examination up to the age of 65. This change would reduce the age to 60 and consequently reduce the number of such examinations. This amendment would conform with 5 U.S.C. 8337(c).

Section 6(a)(4)(B): MINIMUM DISABILITY ANNUITY (F.S. Act Sec. 808(a))

This amendment picks up an amendment made by Executive order 12289 of February 14, 1981 and inserts it at the appropriate place in the statute. The provision, which was made applicable to the Civil Service retirement system by section 404 of the Omnibus Reconciliation Act of 1980, section 404 excludes individuals who are receiving military retired pay or veterans' compensation from the guaranteed minimum disability annuity provision which will continue to apply to individuals who receive military retired pay on account of service-connected disabilities received in combat or caused by an instrumentality of war.

Section 6(a)(4)(D): CORRECTION OF REFERENCE (F.S. Act Sec. 809(h))

This amendment would correct a reference in section 809(h) of the Act.

Section 6(a)(6): VOLUNTARY RETIREMENT (F.S. Act Sec. 811)

This amendment would require members to complete 5 years under the FSRDS before becoming eligible for voluntary retirement at age 50 after 20 years creditable service. In the 1980 Act, a requirement was imposed that a member have at least 5 years of civilian service credit in order to retire voluntarily in order to prevent those with extensive military service from entering the Service and retiring in less than 5 years. This amendment will impose a comparable requirement for those with extensive service under CSRS. The change will be made applicable only to those who enter the Service after enactment of the Act (see effective date section 6(b)(1)). The amendment will permit a member who wishes to retire before completing 5 years in the Foreign Service Retirement and Disability System, whose total Federal Service would entitle him/her to do so under the Civil Service retirement system, to revert to the latter system and receive an annuity thereunder.

Section 6(a)(6)(A): EFFECTIVE DATE OF PENSION TO FORMER SPOUSE (F.S. Act Sec. 814(a)(3))

The first change--insertion of the word "or"--is purely technical to clarify the original intent. The change of effective date of pension payments to a former spouse to first of month following divorce from first of month in which divorce occurs would reduce potential for overpayments and provide consistency with the effective date for changes in survivorship reductions stated in sections 806(i) and 814(b)(5)(A) of the Act. It would eliminate the need to make two successive annuity recomputations when a divorce occurs after retirement--one adjustment to provide a pension to the former spouse and another adjustment the next month to adjust the survivorship reduction.

Section 6(a)(6)(B): COURT-ORDERED CHANGES (F.S. Act Sec. 814(a)(4))

This amendment would permit a court, irrespective of the date of divorce, to order a change in the percentage of a member's annuity which is payable to a former spouse provided the court finds that a substantial change in the economic circumstances of at least one party has occurred. At present, court orders affecting annuity payments issued more than 12 months following a divorce are not valid. The proposed change is consistent with the philosophy of the Act which allows a court to set aside the "pro rata" division stated in section 814 of the Act when individual circumstances so dictate.

Section 6(a)(7)(A): REFUNDS OF CONTRIBUTIONS (F.S. Act Sec. 815(a))

This amendment divides section 815(a) of the Act into two paragraphs. New paragraph (1) requires that members be separated from the Service for at least 31 consecutive days and meet related requirements to be eligible for a refund of their contributions to the Fund. It conforms the FSRDS with the change made in CSRS by section 303(c) of the Omnibus Budget Reconciliation Act of 1982 as amended by section 3(f) of P.L. 97-346.

New paragraph (2) of section 815(a) would correct an apparent oversight in the 1980 Act by eliminating the right of a former spouse who remarries prior to age 60 to a share of the lump-sum payment, just as rights to an annuity are cut off in such circumstances. Also, this paragraph, coupled with new section 815(j) of the Act to be added by section 6(a)(8)(B), would

provide a spouse who so requests a pro rata share of any refund of retirement contributions on resignation, unless waived by a spousal agreement, or a court ordered otherwise. It would provide a spouse the same right to share in refunds on resignation of a Member as section 806(b) now provides with respect to a survivor annuity upon retirement of a Member. It would protect a spouse in the event a member leaves the Service prior to divorce in order to avoid payments to a former spouse required by the Foreign Service Act. In the event a member has both a spouse and former spouse when a refund becomes payable, each would receive a pro rata share of 50% of the refund, and the member would receive the other 50% plus any balance of the first 50% not included in a "pro rata share."

Section 6(a)(7)(B): DIVISION OF REFUNDS WITH SPOUSES ON REQUEST (F.S. Act Sec. 815(j))

This amendment is explained under section 6(a)(8)(A).

Section 6(a)(8): UNHEALTHFUL POST CREDIT--APPLICATION TO FORMER SPOUSES-I (F.S. Act Sec. 816(i)(2))

This amendment deletes current subparagraph (B) of section 816 (i)(2) of the Act which relates to unhealthful post credit. The amendment is explained under section 6(a)(10).

Section 6(a)(9): UNHEALTHFUL POST CREDIT--APPLICATION TO FORMER SPOUSES-II (F.S. Act Sec. 817)

This amendment would eliminate extra service credit for assignments at unhealthful posts granted to members not receiving post differential or danger pay from computations of the 10 years of creditable service during which a marriage must have endured and from computations of the pro rata share benefit. This would mean that a marriage must have endured during ten years of actual service to qualify a former spouse for benefits and that benefits would be based on actual Government service.

Currently, subparagraph (B) of section 816(i)(2), which would be repealed by section 6(a)(9), makes it necessary for the Department to determine whether a spouse resided with a member at an unhealthful post, both before or after passage of the Act. This is almost impossible to determine for periods prior to institution of the special reports now required. The change would simplify administration of the Act without significantly affecting benefits.

Section 6(a)(10): COST OF LIVING ADJUSTMENTS OF ANNUITIES (F.S. Act Sec. 826(c)(1))

This amendment would conform cost-of-living adjustments in Foreign Service annuities with comparable adjustments in Civil Service annuities under 5 U.S.C. 8340 as amended by the Budget Acts of December 5, 1980 and August 13, 1981 (P.L. 96489 and P.L. 97-35, respectively). The former Act ended the "look-back" computation and provided for proration of the first adjustment. These changes were extended to the Foreign Service by Executive orders 12272 and 12289 of January 16, 1981 and February 14, 1981, respectively, except it was not possible to make the change applicable to former spouses by Executive order. This amendment is necessary to accomplish the latter. This amendment also changes the proration formula to conform with the change made by P.L. 97-35 effective August 13, 1981 and is made effective on the same date by section 6(b)(2).

Section 6(a)(11): MISSING PERSONS (F.S. Act Sec. 828)

This amendment would add a new section 828 to the Act. It would expand current section 806(b)(1)(D) to cover additional types of elections when it is established that a spouse or former spouse is missing. It would also authorize payment of benefits otherwise due to the missing person to the participant, if alive, or to a spouse or other former spouse. Section 806(b)(1)(D) of the Act would be repealed by section 6(a)(3)(B).

Section 6(b): EFFECTIVE DATES

Section 6(b)(1) exempts current members from the application of the change in voluntary retirement made by section 6(a)(6) as is explained under that section.

Section 6(b)(2) makes the changes in section 826(c) of the Act, which provides for prorating initial annuity adjustments, retroactive to the date the formula was made applicable to CSRS.

Section 7(1): DESIGNATION OF INVESTIGATORS AND AUDITORS AS MANAGEMENT OFFICIALS FOR LABOR-MANAGEMENT PURPOSES (F.S. Act Sec. 1002(12))

The current section designates as management officials employees assigned to carry out the functions of the Inspector General of the Foreign Service and the Department of State as

management officials. Through inadvertence, officials performing similar audit and investigatory functions in the other foreign affairs agencies were not included. Government-wide practice is to exclude such officials from the bargaining unit, on grounds they have a special relationship and responsibility to management.

Section 7(2): COST SHARING FOR INSTITUTIONAL GRIEVANCES (F.S. Act Sec. 1014(a)(3))

Under section 1105(e) all expenses of the Foreign Service Grievance Board are now paid out of funds appropriated to the Department of State; this includes expenses of institutional grievances where a union participates in bringing the grievance under chapter 10 of the Act. This amendment would require cost-sharing for these institutional (but not individual) grievances to be included in procedures negotiated by agency management and the exclusive representatives for resolution of implementation disputes relating to collective bargaining agreements. Our estimate, assuming a presiding officer's fee of $300 per day plus travel and per diem, is that the average institutional grievance would have a cost of from $1500 to $3000.

Section 8(1): PROTECTION OF RIGHTS FOLLOWING MANDATORY CONVERSION FROM FOREIGN SERVICE TO CIVIL SERVICE (F.S. Act Sec. 2104)

As enacted, the conversion provisions of the Foreign Service Act expire on February 14, 1984 (July 1, 1984 for USIA). In a few limited cases, it is now apparent that this will not be sufficient time to realign the personnel organization of the several agencies, especially for groups of employees who were originally considered to be worldwide available and therefore appropriately remaining in the Foreign Service, but who subsequently have been determined to be needed only for employment at home.

Consistent with the intent of the Act that domestic functions be carried out by members of the Civil Service, this change would allow completion of realignment of our two personnel systems without loss of pay, status, or benefits by employees. The three year period would expire 3 years after the date of enactment of this subsection, and would be consistent with the conversion period allowed other convertees under the Act. The amendment would apply only to individuals not previously eligible for conversion from the Foreign Service, since they were originally in the worldwide category after the effective

date of the Act but prior to a decision that a particular occupation should be in the domestic group. Thus, it would not extend the original 3 year period allowed for conversion for those originally designated as domestic, particularly in the Department of State or USIA. The current plan is to apply the new authority only to certain security officers in the Department of State.

Section 8(2): SELECTION-OUT AUTHORITY FOR A.I.D. (F.S. Act Sec. 2106(e)(2))

This is a technical amendment. Prior to the effective date of the Foreign Service Act of 1980 the Department of State had a selection-out procedure for Foreign Service officers who failed to meet standards of performance prescribed by regulation. Selection-out was not applicable to State's Foreign Service Staff (FSS) employees. State's authority for selection-out was based on section 633 of the Foreign Service Act of 1946. Concurrently A.I.D. had a selection-out procedure applicable, with certain exceptions, to all A.I.D. FSS and Foreign Service Reserve (FSR) employees; however, A.I.D.'s selection-out authority was based on section 625(e) of the Foreign Assistance Act of 1961, as amended.

Section 608 of the 1980 Act, which replaces both former selection-out authorities, is applicable to the United States citizen Foreign Service career members of all the foreign affairs agencies.

The intent was to limit adverse impact on individuals who were in a career Foreign Service Staff status prior to the enactment of the Foreign Service Act of 1980 (October 17, 1980) and thus were not subject to selection-out, but who were involuntarily made "members of the (Foreign) Service" under the 1980 Act. To achieve this result the 1980 Act, in section 2106(e), exempted career appointees who had not been subject to section 633(a)(2) of the 1946 Act immediately prior to February 15, 1981 from selection-out for ten years. Unfortunately, a literal interpretation of the language of section 2106(e) could also exempt A.I.D. Foreign Service employees who were not subject to section 633(a)(2), but instead were subject to the FAA counterpart, section 625(e).

This amendment corrects a technical defect in the statute by making clear that A.I.D. Foreign Service employees, who were subject to selection-out under section 625(e) of the FAA, remain subject to the selection-out provisions of section 608 of the 1980 Act.

Section 9: FOREIGN COMMERCIAL SERVICE LIMIT ON NON-CAREER SFS APPOINTMENTS (F.S. Act Sec. 2403(c))

Section 2403(c), a temporary provision of the 1980 Act is being repealed. The limitation contained therein is being made a permanent provision and is being included in section 305 of the Act by section 3(1) of the bill.

Section 10: AMENDMENTS OF DEPARTMENT OF STATE BASIC AUTHORITIES ACT

This section of the bill amends various sections of the Basic Authorities Act (B.A. Act) as explained below.

Section 10(1)(A): AUTHORIZATION TO EXPEND FUNDS (B.A. Act Sec. 2: 22 U.S.C. 2669)

As presently drafted, section 2 of the B.A. Act requires that each appropriation act contain language permitting use of appropriated funds for the purposes specified in section 2 such as provision for printing and binding, payment of tort claims under specified limitations, etc. This amendment removes that requirement in order to avoid the possibility of inadvertent loss of necessary authorities by dropping a few words during the appropriation process.

Section 10(1)(B): EXPERTS AND CONSULTANTS (B.A. Act Sec. 2(g) 22 U.S.C. 2269(g))

As required by 5 U.S.C. 3109, an agency must have special statutory authority to hire experts and consultants. At present the Department does this by language in each annual appropriation act. In order to avoid loss of necessary authority by inadvertent dropping of the necessary words in the appropriation process, this amendment to 22 U.S.C. 2669(g) would make the authority a permanent provision of law. In accordance with Government-wide practice, the amendment would also authorize compensation up to the top of GS-18, rather than GS-15, the current maximum for this Department.

Section 10(2) USE OF GOVERNMENT VEHICLES/EXPENSES OF ARBITRATION (B.A. Act Sec. 11: 22 U.S.C. 2678)

Both section 11 (22 U.S.C. 2678) and 28 (22 U.S.C. 2700) of the B.A. Act provide essentially the same authority for a Chief of Mission to authorize use of Government-owned vehicles for

transporting employees and their families for reasons of safety or other advantage to the Government. Section 28 was enacted in 1980, making the older section 11 duplicative. This amendment replaces old section 11 with new material on international arbitrations.

At present, the Department's authority to use appropriated funds for the expenses of arbitration and other dispute resolution proceedings under international agreements and contracts requires inclusion of language in each annual appropriation act. This amendment makes such authority a permanent provision of law to avoid the possibility of inadvertent loss of necessary authority through dropping a few words in the appropriation process.

Section 10(3): ADDITIONAL PER DIEM FOR AID AND USIA EMPLOYEES (B.A. Act Sec. 32 22 U.S.C. 2704)

Section 32 of the Department's Basic Authorities Act now provides for additional per diem for 1) security officers required to accompany principals of the Department and Foreign dignitaries and 2) other employees who are required to spend extraordinary amounts of time in travel status, and who thereby incur additional expenses. The proposed amendment would extend this authority to officers of AID and USIA in like circumstances.

Sections 11(1): CALCULATION OF LUMP SUM LEAVE PAYMENT UPON SEPARATION (5 U.S.C. 5551)

This amendment would prohibit inclusion of any post differentials or foreign or territorial allowances for hardship in lump sum leave payments for employees who retire from a post abroad rather than in the United States. The existing statute provides the possibility of a windfall payment, which the Inter-Agency Committee on Allowances has recommended be eliminated. This amendment would produce Government-wide savings. The term "basic pay" is defined in 5 U.S.C. 8331(3).

Section 11(2): HOME SERVICE TRANSFER ALLOWANCE (5 U.S.C. 5724a(a)(3)

This amendment would permit flexibility with payment of lodging/subsistence upon an employee's transfer from a foreign post to the U.S. At present, up to 30 days is authorized at the foreign post prior to departure and up to 30 days is authorized in the U.S. after arrival here. The amendment would

permit flexibility for the employee to use up to a total of 60 days in any combination at the post and in the U.S, according to personal circumstances.

Section 11(3): EDUCATION ALLOWANCES AT TIME OF TRANSFER, FOR HANDICAPPED CHILDREN AND AT POST SECONDARY EDUCATIONAL INSTITUTIONS (5 U.S.C. 5924(4))

Together, these changes update and improve the education allowance system to bring it into line with current circumstances and problems.

The first change permits payment of educational allowances for children of employees being transferred or newly assigned to a Foreign Service post with inadequate schooling for the entire school year, even if the member of the Service does not depart the United States until after the beginning of the school year. (Generally, the reverse situation, transfer back to the United States during the school year, can be managed, if the member of the Service wishes his or her children to remain in their current schools during the remainder of the semester.)

The second amendment would permit educational services to be provided for handicapped children, beginning at age 3. P.L. 94-142, the "Education for All Handicapped Children Act of 1975," generally requires states to offer public educational facilities for handicapped children from age three. It seems desirable to amend 5 U.S.C. so that overseas education allowance policy may be consistent with U.S. public school education practice for handicapped children. Under present law, no allowance can be granted for a handicapped or normal child under age 4 and who is not at least in a kindergarten program.

The third amendment would permit post-secondary educational travel for dependents not only for undergraduate college education, but also at other institutions such as nursing, technical, vocational, music and performing arts schools which are not considered colleges. This amendment is necessary in order to provide the appropriate kinds of post-secondary education for a wider variety of chosen career fields for dependent children. The term "educational institution" in the text of the amendment is drawn from 38 U.S.C. 1701(a)(6) (Veterans Benefits). It is not planned to extend the benefit during post-graduate education, as is possible for Veterans. Accredited educational institutions at which these benefits can be used will be determined by reference to an established list, such as that developed by the Veterans Administration or the Department of Education. The list or lists to be used will be specified by regulations issued by the Secretary.

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Section 12(4): BURIAL EXPENSES FOR FOREIGN SERVICE NATIONAL EMPLOYEES (5 U.S.C. 5944)

The existing provision provides for a $100 payment of burial expenses for FSN employees. At times, this is in conflict with local practice and can give the appearance that the United States Government does not properly appreciate or value the contributions of its foreign national employees. If this section is repealed, the intention would be to rely upon the authority contained in section 408 of the Foreign Service Act of 1980, Local Compensation Plans, to develop appropriate provisions for payment of burial and last illness expenses where such payment is in accordance with local practice in specific countries.